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LANGDALE, VALLOTTON ET AL.
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EXAMINER	
PONOMARENKO, NICHOLAS	
ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/935,936
Filing Date: August 23, 2001
Appellant(s): CARPENTER, DONALD G.

Donald Gilbert Carpenter
For Appellant

EXAMINER'S ANSWER

MAILED
JUL 3 / 2006
GROUP 2600

This is in response to the appeal brief filed on November 14, 2005 appealing from the
Office action mailed September 15, 2004.

(1) Real Party in Interest

A statement identifying the real party of interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The brief is deficient because references to the specification pages are not identified correctly.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "means for converting the kinetic energy", which are functional, must be shown or the feature(s) canceled from the claim(s). Provided drawings fail to show a functional or operational device, as explained below in this Office action. No new matter should be entered.
2. The drawings are objected to under 37 CFR 1.83(a) because they fail to identify the following elements:
 - a) "sleeve or tube 73" (from Fig. 8B) in Fig. 6, as described in the specification (page 33, line 9).
 - b) Structural relationship between rods, connected to cylinders 21 and 22, and rods 51 and 51A (Fig. 6 and 7).
 - c) Structural relationship between rods 72 and 82 (Fig. 8A and 8B) with the rest

Art Unit: 2834

of the assembly.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application.

Specification

3. The specification is objected to under 37 CFR 1.71 because it does not contain a written description of the invention with specific details on how to make or use the invention, in full, clear, concise, and exact terms as to enable a person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and the specification does not set forth the best mode contemplated by the inventor of carrying out his invention. Specifically, the disclosure failed to provide information about the structure of the device, as it is shown in the drawings (Fig. 3, 6, 7, 8A, 8B), in a clear and concise language to convey to one of ordinary skill in the art understanding of the structure and its functionality because the disclosure replete with statements which are confusing, not correct, or contradict laws of physics. For example:

On page 1, the phrase "No-one is really certain about the physical principles that enables an electrical conductor, when moved relative to magnetic field, to produce an electrical current" is contradictory or speculative.

On page 4, lines 11-16, applicant describes a concept of generation based on "excess" energy in a closed system, which contradicts the laws of thermodynamics (see explanation in par. 10 in this Office action below).

On page 6, par. 22, applicant makes a statement, that his device utilizes energy "transformations between system", which is not correct, because applicant has only ONE system, not TWO (see explanation in par. 10 of this Office action below).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-8 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Specifically, claim 1 has "means for converting kinetic energy ... into electrical energy". This claim invokes statute 35 USC 112, sixth paragraph, by using the phrase "means for" and by modifying the phrase with functional language. Such claim must be interpreted in view of the specification. The specification, as is shown above in this Office action, is not describing a structure or a device in such a way as to enable the operation or to provide information for making or using the claimed device.

Claims 2 - 8 are indefinite because they depend on the rejected claim and do not correct the noted problem.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a known asserted utility or a well established utility.

It is Examiner's understanding that the claimed invention is based on incorrect understanding and/or application of the laws of thermodynamics, and that Applicant made an attempt to create a device, which will work without an external source of energy, which is not possible according to the law of conservation of energy. The following explanation shows why the claimed invention lacks utility.

The concept of the claimed system is in the premonition that one can generate energy if one could utilize the differences of kinetic energies from two kinetic systems. Additionally, these kinetic differences can be controlled and sustained indefinitely. Specifically, a small mass is moved from the First Kinetic System to the Second Kinetic System and back. The kinetic energy of the moved small mass carries that energy, which is utilized for moving cylinders, rods and wheels connected to the electrical generator. Important to note, that Applicant does not provide a source of energy for these operation and argues that his system will function as disclosed because he has discovered the unknown arrangement or phenomenon, which can create energy and does not break laws of conservation of energy, because in his system is a TWO independent systems, not a ONE as defined by the law of conservation of energy.

Applicant believes that his claimed invention performs a "transformation between

systems" (page 6, par. 22). **This assertion is the principal mistake in the disclosure and the reason for the lack of the device operability/utility.**

The Applicant provides definitions of the Principle of the Conservation of Energy in his specification, but he fails to apply this principle correctly to his device. For example, the Principal of the Conservation of Energy states that "the sum of total of all the energy within **any given boundary, through which energy is not allowed to pass,** remains constant." Please note, that it is important to have two conditions for the application of the Principal of Conservation of Energy: first – we must have a "given boundary", which is also known in physics as a "closed system"; second – no energy is allowed to pass through this boundary or we should not have any interaction with the external to this boundary world. Both requirements are met in the design of the claimed system – it is a closed system and it has no energy input or output to the system. For these reasons the claimed system cannot be considered as a "means for converting kinetic energy into electrical energy", since NO ENERGY source exist in the claimed system, but applicant claims that all energy is CREATED within the boundary of the system, which is impossible.

8. Claims 1-8 also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a clearly asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Art Unit: 2834

9. When a patent applicant presents an application describing an invention that contradicts known scientific principles, or relies on previously undiscovered scientific phenomenon, the burden is on the examiner simply to point out this fact to the appellant... The burden shifts to appellant to demonstrate either that his invention, as claimed, is operable or does not violate basic scientific principles, or that those basic scientific principles are incorrect. *As stated by the Patent Office Board of Appeals, Newman v. Quigg 681 F.Supp 16, at 18, 5 U.S.P.Q. 2d 1880 (1988).*

Applicants are required to furnish a working model of their invention in order to demonstrate its operability. See MPEP § 608.03; 37 CFR 1.91.

(10) Response to Argument

Applicant argues that Office action rejection

"... is based on:

- a. Malapropism;
- b. Incorrect statements of physical principles; and
- c. A mistaken belief that the invention is directed to one and not two moving systems."

Applicant is wrong on all three counts. All issues are addressed in examiner's Office action dated September 15, 2004 (see paragraph 9 above). The three listed above points of Applicant arguments, additionally, are addressed below.

a) Melapropisms.

The applicant uses inappropriate term to address rejection under 35 U.S.C. 112, first paragraph, of the disclosure. In fact, applicant is not addressing the problems of the

Art Unit: 2834

disclosure but concentrates on insignificant issue of naming the item by the examiner, specifically, by stating that examiner used word "cylinder" for item 21 and 22 (Fig. 6) instead of word "piston", as it is named in the specification. This name "cylinder" or "piston" is used just to identify item on the drawing and carries no functional information since it is very clear from the drawing which item (21, 22) examiner is addressing. The item shape on the drawing appears as a "cylinder" and anybody of any skill in the art would not have any problem to understand what the examiner names. It appears that the applicant is avoiding to address the real problem of device enabling, specifically, the problem of structural relationship between rods 51 and 51A (Fig. 6 and 7), which cannot move in the proposed structure of Fig. 6 from the movement of items 21 and 22, as they supposed to do according to the different view of the same structure on Fig. 7.

This type of response is a malapropism, for lack of better term, on the part of the applicant.

b). Incorrect statements of physical principles.

The applicant objects to the textbook statements of The Principle of Conservation of Energy, which was presented by the examiner in the Office action dated September 15, 2004, specifically:

"... The sum total of all the energy within any given boundary, through which energy is not allowed to pass, remains constant."

Applicant argues, "...the absence of a citation that identifies the source for the

Art Unit: 2834

foregoing statement, applicant is not able to determine if the source for the quotation is authoritative." There is no need to provide a source for the basic concepts of the physics, which are a textbook knowledge, but for applicant's convenience the source of the above statement about The Principle of Conservation of Energy was taken from "A Text-Book of Physics", seventh edition, Longmans, Green and Co, 1920, page 87.

Applicant clearly has a problem of applying this principle to his system, and a problem of understanding why his system contradicts The Principle of Conservation of Energy. Applicant attention is directed to his drawing, Figure 6, which probably shows the claimed system with most functional details. According to The Principle of Conservation of Energy, as it can be applied to the applicant's system, the sum of energy within the boundary of the system shown on Fig. 6 should remain constant. It means, if energy in **is not** added to the system (Fig. 6), as is in applicant's, no energy can be generated and extracted from the system on a sustain basis. Any conversions of energy within the boundary of the system will keep the energy constant in the ideal case, but in a real system the energy conversion will decrease total energy by the loses during the conversion. This will usually result in a heat energy, which, if not kept within the system, will escape outside the system. The real process will lead to complete stop of any energy conversion process in a given time. Applicant intention is to produce an electrical energy, as clearly stated in the specification, for example, on page 4, 9-th paragraph – "...excess" energy is generated – the "excess" being an amount than is greater than the sum of the ejected energy observed by the piston ejecting the slugs, the recoil energies, and the other energy losses". Such energy production is not

Art Unit: 2834

possible because the claimed system contradicts The Principle of Conservation of Energy.

c) A mistaken belief that the invention is directed to one and not two moving systems.

It is a mistake of the applicant, not the examiner, to believe that "excess" energy can be generated from the boundary of one system without external input of the energy, as is explained in paragraph 9 and 10(b) above. Applicant has one system within boundary of which the transformation of energy is taking place. As was stated by the examiner, such transformation of energy cannot produce more energy from already existing within the boundary, which means that no "excess" energy can be produced because it would be a violation of The Principle of Conservation of Energy.

The applicant has one system because there are mechanical interconnections between elements of the system. These interconnections constitute one kinematical system by the definition. If we would have two moving systems, they would not be mechanically connected and would have independent kinematical boundaries. Still, even with two systems in the case of applicant concept, each of the systems would obey The Principle of Conservation of Energy within its own boundary and without external energy input they would not produce any "excess" energy.


Art Unit: 2834

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

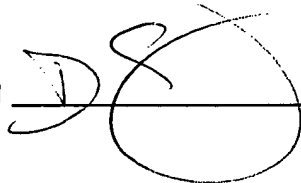

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Appeal Conference held on

June 19, 2006

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